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ONE HUNDRED NINTH CONGRESS

# Congress of the United States House of Representatives

COMMITTEE ON THE JUDICIARY

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September 7, 2005

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Ms. Elizabeth Bazan Mr. Charles Doyle American Law Division Congressional Research Service The Library of Congress 101 Independence Avenue, SE Washington, DC 20540-7500

Dear Ms. Bazan and Mr. Doyle:

I write to request that CRS review the applicable law and legal requests pertaining to Hurricane Katrina, and confirm whether or not the necessary steps were taken to give the Federal government in general, and the Federal Emergency Management Agency (FEMA) in particular, the legal authority needed to act to save lives and mitigate the damage stemming from Hurricane Katrina in Louisiana.

Given that the Administration has described the Hurricane as the largest natural disaster in our nation's history, it is inconceivable to me that they would permit a bureaucratic issue to interfere with the performance of its job. However, it appears to me that the State of Louisiana took all necessary and appropriate actions to permit federal engagement. Some in the White House and Congress appear to want to derail any inquiry of this matter by labeling attempts to assess accountability as a "blame game." In my view, such labeling is not only misguided, but has potentially deadly implications, as it is essential to determine what went wrong and who is responsible so that we can correct shortcomings and avoid a similar debacle in the future.

An immediate review of the legal authority is necessary due to the continuing confusion in the media and the public concerning whether or not FEMA's actually had the necessary authority to respond under the law. For example, Monday's New York Times reports that "the administration is ... working to shift the blame away from the White House and toward officials

Ms. Elizabeth Bazan Mr. Charles Doyle Page 2 September 7, 2005

in New Orleans and Louisiana, who, as it happens are Democrats." I also understand that White House officials provided information to the *Washington Post* claiming that "[A]s of Saturday, Blanco still had not declared a state of emergency," and to *Newsweek*, asserting that "Louisiana Gov. Kathleen Babineaux Blanco seemed uncertain and sluggish, hesitant to declare martial law or a state of emergency, which would have opened the door to more Pentagon help."

My own review of the facts and law indicates the following:

- The Stafford Act, the relevant statute concerning natural disaster relief, provides that "[a]ll requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State." The Act goes on to specify that such a request is "a prerequisite to major [federal] disaster assistance" and details various information which is to be included in such a request.
- On Saturday, August 27 and Sunday, August 28, Gov. Kathleen Blanco wrote to
  President Bush requesting that the president "declare an emergency for the State of
  Louisiana due to Hurricane Katrina." The letters reference the Stafford Act and itemize
  the severity and magnitude of Hurricane Katrina and specifically requests federal
  assistance.<sup>6</sup>
- On Saturday, August 27, President Bush issued a Statement on Federal Emergency Assistance for Louisiana. He "declared an emergency exists in the State of Louisiana" and by its terms "authorizes the Department of Homeland Security, Federal Emergency

<sup>5</sup>*Id*.

<sup>6</sup>Letter to President Bush through FEMA Region VI from Gov. Kathleen Babineaux Blanco, Aug. 27, 2005. Letter to President Bush through FEMA Region VI from Gov. Kathleen Babineaux Blanco, Aug. 28, 2005.

<sup>&</sup>lt;sup>1</sup>Adam Nagourney and Anne E. Kornblut, White House Enacts Plan to Ease Political Damage, THE NEW YORK TIMES, Sept. 5, 2005.

<sup>&</sup>lt;sup>2</sup>Manuel Roig-Franzia and Spencer Hsu, Many Evacuated, but Thousands Still Waiting, THE WASHINGTON POST, Sept. 4, 2005.

<sup>&</sup>lt;sup>3</sup>Evan Thomas, The Lost City, Newsweek, Sept. 12, 2005.

<sup>&</sup>lt;sup>4</sup>42 U.S.C.A. § 5170 (2005).

Ms. Elizabeth Bazan Mr. Charles Doyle Page 3 September 7, 2005

Management Agency (FEMA), to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency to the local population." The White House statement also references the provisions of the Stafford Act.<sup>7</sup>

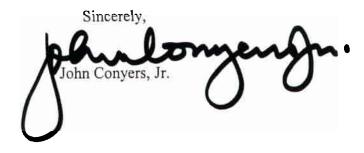
The DHS website provides that "in the event of a terrorist attack, natural disaster, or other large scale emergency, the Department of Homeland Security will assume primary responsibility on March 1 for ensuring that emergency response professionals are prepared for any situation. This will entail providing a coordinated, comprehensive federal response to any large-scale crisis and mounting a swift and effective recovery effort."

For your convenience, I have attached copies of all of the above materials to this letter.

In my judgment, it would appear to be relatively straightforward that the Governor's letter, combined with the declaration by President Bush granted DHS and FEMA full and complete authority to respond to Hurricane Katrina and to provide necessary aid and assistance to Louisiana and the other affected States. However, it would be extremely helpful if you could confirm to me whether or not I am reading the law correctly.

Given the importance and urgency of this issue, I would ask that you please provide us with a detailed analysis no later than Monday, September 12, 2005. Please feel free to contact Perry Apelbaum or Ted Kalo of the Judiciary Committee staff, at 2142 Rayburn House Office Building, Washington, DC 20515 (tel. 202-225-6504, fax 202-225-4423), with any questions or requests for any additional information.

Thank you for your prompt attention to this issue.



<sup>&</sup>lt;sup>7</sup>White House Statement on Federal Emergency Assistance for Louisiana, August 27, 2005.

<sup>&</sup>lt;sup>8</sup>See <a href="http://www.dhs.gov/dhspublic/theme\_home2.jsp.">http://www.dhs.gov/dhspublic/theme\_home2.jsp.</a>





For Immediate Release Office of the Press Secretary August 27, 2005

# Statement on Federal Emergency Assistance for Louisiana

The President today declared an emergency exists in the State of Louisiana and ordered Federal aid to supplement state and local response efforts in the parishes located in the path of Hurricane Katrina beginning on August 26, 2005, and continuing.

The President's action authorizes the Department of Homeland Security, Federal Emergency Management Agency (FEMA), to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the parishes of Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Claiborne, Catahoula, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Pointe Coupee, Ouachita, Rapides, Red River, Richland, Sabine, St. Helena, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, West Feliciana, and Winn.

Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency. Debris removal and emergency protective measures, including direct Federal assistance, will be provided at 75 percent Federal funding.

Representing FEMA, Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, named William Lokey as the Federal Coordinating Officer for Federal recovery operations in the affected area.

FOR FURTHER INFORMATION CONTACT: FEMA (202) 646-4600.

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Return to this article at:

http://www.whitehouse.gov/news/releases/2005/08/20050827-1.html

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Today is Wednesday, September 7, 2005

Press Release

Date: 8/27/2005

Contact: Denise Bottcher or Roderick Hawkins at 225-342-9037

Governor Blanco asks President to Declare an Emergency for the State of Louisiana due to Hurricane Katrina

BATON ROUGE—Today Governor Kathleen Babineaux Blanco forwarded a letter to President Bush requesting that he declare an emergency for the State of Louisiana due to Hurricane Katrina. The full text of the letter follows:

August 27, 2005

The President The White House Washington, D. C.

Through: Regional Director FEMA Region VI 800 North Loop 288 Denton, Texas 76209

Dear Mr. President:

Under the provisions of Section 501 (a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act), and implemented by 44 CFR § 206.35, I request that you declare an emergency for the State of Louisiana due to Hurricane Katrina for the time period beginning August 26, 2005, and continuing. The affected areas are all the southeastern parishes including the New Orleans Metropolitan area and the mid state Interstate I-49 corridor and northern parishes along the I-20 corridor that are accepting the thousands of citizens evacuating from the areas expecting to be flooded as a result of Hurricane Katrina.

In response to the situation I have taken appropriate action under State law and directed the execution of the State Emergency Plan on August 26, 2005 in accordance with Section 501 (a) of the Stafford Act. A State of Emergency has been issued for the State in order to support the evacuations of the coastal areas in accordance with our State Evacuation Plan and the remainder of the state to support the State Special Needs and Sheltering Plan.

Pursuant to 44 CFR § 206.35, I have determined that this incident is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments, and that supplementary Federal assistance is necessary to save lives, protect property, public health, and safety, or to lessen or avert the threat of a disaster. I am specifically requesting emergency protective measures, direct Federal Assistance, Individual and Household Program (IHP) assistance, Special Needs Program assistance, and debris removal.

Preliminary estimates of the types and amount of emergency assistance needed under the Stafford Act, and emergency assistance from certain Federal agencies under other statutory authorities are tabulated in Enclosure A.

The following information is furnished on the nature and amount of State and local resources that have been or will be used to alleviate the conditions of this emergency:

- Department of Social Services (DSS): Opening (3) Special Need Shelters (SNS) and establishing (3) on Standby.
- Department of Health and Hospitals (DHH): Opening (3) Shelters and establishing (3) on Standby.
- Office of Homeland Security and Emergency Preparedness (OHSEP): Providing generators and support staff for SNS and Public Shelters.
- Louisiana State Police (LSP): Providing support for the phased evacuation of the coastal areas.
- Louisiana Department of Wildlife and Fisheries (WLF): Supporting the evacuation of the affected population and preparing for Search and Rescue Missions.

Mr. President Page Two August 27, 2005

• Louisiana Department of Transportation and Development (DOTD): Coordinating traffic flow and management of the

evacuations routes with local officials and the State of Mississippi.

The following information is furnished on efforts and resources of other Federal agencies, which have been or will be used in responding to this incident:

• FEMA ERT-A Team en-route.

I certify that for this emergency, the State and local governments will assume all applicable non-Federal share of costs required by the Stafford Act.

I request Direct Federal assistance for work and services to save lives and protect property.

- (a) List any reasons State and local government cannot perform or contract for performance, (if applicable).
- (b) Specify the type of assistance requested.

In accordance with 44 CFR § 206.208, the State of Louisiana agrees that it will, with respect to Direct Federal assistance:

- 1. Provide without cost to the United States all lands, easement, and rights-of-ways necessary to accomplish the approved work.
- 2. Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;
- 3. Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and
- 4. Assist the performing Federal agency in all support and local jurisdictional matters.

In addition, I anticipate the need for debris removal, which poses an immediate threat to lives, public health, and safety.

Pursuant to Sections 502 and 407 of the Stafford Act, 42 U.S.C. §§ 5192 & 5173, the State agrees to indemnify and hold harmless the United States of America for any claims arising from the removal of debris or wreckage for this disaster. The State agrees that debris removal from public and private property will not occur until the landowner signs an unconditional authorization for the removal of debris.

I have designated Mr. Art Jones as the State Coordinating Officer for this request. He will work with the Federal Emergency Management Agency in damage assessments and may provide further information or justification on my behalf.

Sincerely,

Kathleen Babineaux Blanco Governor Enclosure

## ENCLOSURE A TO EMERGENCY REQUEST

Estimated requirements for other Federal agency programs:

- Department of Social Services (DSS): Opening (3) Special Need Shelters (SNS) and establishing (3) on Standby. Costs estimated at \$500,000 per week for each in operation.
- Department of Health and Hospitals (DHH): Opening (3) Shelters and establishing (3) on Standby. Costs estimated at \$500,000 per week for each in operation.
- Office of Homeland Security and Emergency Preparedness (OHSEP): Providing generators and support staff for SNS and Public Shelters. Costs estimated to range from \$250,000-\$500,000 to support (6) Shelter generator operations.
- Louisiana State Police (LSP): Costs to support evacuations \$300,000 for a non-direct landfall.
- Louisiana Department of Wildlife and Fisheries (WLF): Costs to support evacuations \$200,000 for a non-direct landfall.
- Louisiana Department of Transportation and Development (DOTD): Costs to support evacuations \$2,000,000 for a non-direct landfall.

Totals: \$ 9,000,000

Estimated Requirements for assistance under the Stafford Act:

Coordination: \$0

Technical and advisory assistance: \$0

Debris removal: \$0

Emergency protective measures: \$ 9,000,000 Individuals and Households Program (IHP): \$0

Distribution of emergency supplies: \$0

Other (specify): \$0

Totals: \$ 9,000,000 Grand Total: \$ 9,000,000



# State of Louisiana

MILITARY DEPARTMENT

# OFFICE OF HOMELAND SECURITY AND **EMERGENCY PREPAREDNESS**

August 28, 2005

The President The White House Washington, DC

BERNETT C. LANDRENEAU MAJOR GENERAL THE ADJUTANT GENERAL DURECTOR

MICHAEL L. BROWN Calapel (LA) Deputy Director urgasay Preparedo

RE, XUARYAM, Y NIWCAL Colpasi (Ret.) Deputy Cirector Homeland Survey

Through:

Regional Director FEMA Region VI 800 North Loop 288 Denton, Texas 76209

Dear Mr. President:

Under the provisions of Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act), and implemented by 44 CFR § 206.36, I request that you declare an expedited major disaster for the State of Louisiana as Hurricane Katrina, a Category V Hurricane approaches our coast south of New Orleans; beginning on August 28, 2005 and continuing. The affected areas include all the southeastern parishes including the City of New Orleans directly impacted by the brunt of the storm and the mid state and northern parishes accepting the thousands of citizens forced to evacuate from the impacted areas directly affected by Hurricane Katrina.

Parishes expected to receive major damage based on the anticipated track of Hurricane Katrina arc: Ascension, Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John, St. Tammany, Tangipahoa, Terrebonne, and Washington.

In addition we are expecting that the following parishes to suffer significant damage as tropical storm force wind and heavy rainfall occur in the aftermath of Hurricane Katrina's landfall: Acadia, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Course, St. Helena, St. Mary, St. Martin, Vermilion, West Baton Rouge, and West Feliciana.

Parishes that are affected by the evacuation of persons from the southeastern parishes of the state as we implement the Louisiana Shelter Operations Plan are: Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, Desoto, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, and Winn

In response to the situation, I have taken appropriate action under State law and directed the execution of the State Emergency Plan on August 26, 2005, in accordance with Section 401 of the Stafford Act. A State of Emergency has been issued for the State in order to support the evacuations of the coastal areas and the remainder of the state to support the State Evacuation and Sheltering Plan.

A Preliminary Damage Assessment will be conducted as soon as possible after the landfall of Hurricane Katrina. Based on the predictions we have received from the National Weather Service and other sources, I have determined that this incident will be of such severity and magnitude that effective response will be beyond the capabilities of the State and the affected local governments and that supplementary Federal assistance will be necessary.

Mr. President Page two August 28, 2005

Individual Assistance, including the Individual and Household Program (IHP), Disaster Unemployment Assistance, Crisis Counseling, Public Assistance (Category A -G funding at 100%), Small Business Administration (SBA) disaster loans and Direct Federal Assistance (DFA) funding at 100% for the following parishes: Acadia, Ascension, Assumption, Calcasicu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberial, Iberiale, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Pointe Coupee, Orleans, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terreborme, Vermilion, Washington, West Baton Rouge, and West Feliciana.

To support the evacuation/sheltering effort, I am also requesting: Individual Assistance, including the Individual and Household Program (IHP), Crisis Counseling, and Public Assistance (Category B) for the following parishes: Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, Desoto, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, and Winn.

The State Hazard Mitigation Plan (SHMP) was approved by FEMA on April 15, 2005. We are requesting Hazard Mitigation for eligible applicants that have a FEMA Approved Local Hazard Mitigation Plan and the parishes that are approved within the application period for this disaster.

The following information is furnished on the nature and amount of State and local resources that have been or will be used to alleviate the conditions of this disaster:

- Ten Special Needs and six General Population shelters have been opened in the affected parishes on 8/28/2005.
- O Ascension and St. James Parishes have instituted precautionary evacuations.
- St. Charles, Jefferson (Grand Isle and Lafitte), Lafourche (outside of flood gates), Plaquemines,
   Orleans (portions) and Assumption Parishes have instituted mandatory evacuations.
- St. Bernard, Terrebonne (south of the Intracoastal Waterway), Orleans and St. John the Baptist Parishes have recommended evacuations.
- Louisiana began contra-flowing traffic on I-10, I-55, I-59 and portions of I-20. Contra-flow will
  cease six hours prior to landfall.
- o Bridges, ferries and airports are expected to close when maximum sustained winds reach 39 mph.
- O Department of Social Services (DSS) / ARC / Local: Open (48) Special Need Shelters (SNS) and establishing (3) on Standby.
- O Department of Health and Hospitals (DHH)/ (DSS): Opening (8) Special Needs Shelters (SNS) Shelters and establishing (3) on Standby.
- LANG and the Office of Homeland Security and Emergency Preparedness (OHSEP): Providing generators and support staff for SNS and Public Shelters and field personnel and equipment.
- o Louisiana State Police (LSP): Costs to support evacuations.

Mr. President Page Three August 28, 2005

- o Louisiana Department of Wildlife and Fisheries (WLF): Costs to support evacuations.
- o Louisiana Department of Transportation and Development (DOTD): Costs to support evacuations.

Due to the extraordinary nature of this catastrophic hurricane and based on the anticipated damages in the impacted areas including the New Orleans Metropolitan region, I am requesting an increase of the Federal cost share from 75% to 100% for Individual Assistance, Public Assistance (All Categories) and Direct Federal Assistance. I certify that for this major disaster, the State and local governments will assume the applicable non-Federal share of costs required by the Stafford Act.

I request direct Federal assistance for work and services to save lives and protect property.

- (a) We do not anticipate State and local government resources to be able to accomplish the volume of debris removal anticipated for this disaster.
- (b) We are requesting a direct debris removal mission assignment for Hurricane Katrina.

In accordance with 44 CFR § 206.208, the State of Louisiana agrees that it will, with respect to direct Federal assistance:

- 1. Provide without cost to the United States all lands, casements and rights-of-ways necessary to accomplish the approved work;
- Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;
- 3. Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and
- 4. Assist the performing Federal agency in all support and local jurisdictional matters.

In addition, I anticipate the need for debris removal, which poses an immediate threat to lives, public health, and safety.

Pursuant to Sections 403 and 407 of the Stafford Act, 42 U.S.C. §§ 5170b & 5173, the State agrees to indemnify and hold harmless the United States of America for any claims arising from the removal of debris or wreckage for this disaster. The State agrees that debris removal from public and private property will not occur until the landowner signs an unconditional authorization for the removal of debris.

I have designated Mr. Arthur G. Jones as the State Coordinating Officer for this request. He will work with the Federal Emergency Management Agency in damage assessment and may provide further information or justification on my behalf.

Sincerely,

Kathleen Babineaux Blanco

Governor

Enclosure

#### ENCLOSURE A TO EXPEDITED REQUEST

#### Estimated requirements for other Federal agency programs:

- Department of Social Services (DSS): Opening (3) Special Need Shelters (SNS) and establishing
   (3) on Standby. Costs estimated at \$500,000 per week for each in operation.
- Department of Health and Hospitals (DHH): Opening (3) Shelters and establishing (3) on Standby. Costs estimated at \$500,000 per week for each in operation.
- LANG and the Office of Homeland Security and Emergency Preparedness (OHSEP): Providing generators and support staff for SNS and Public Shelters. Costs estimated to range from \$250,000-\$500,000 to support (6) Shelter generator operations and personnel/equipment support.
- Louisiana State Police (LSP): Costs to support evacuations \$500,000 for a direct landfall.
- Louisiana Department of Wildlife and Fisheries (WLF): Costs to support evacuations \$500,000 for a direct landfall.

• Louisiana Department of Transportation and Development (DOTD): Costs to support evacuations - \$5,000,000 for a direct landfall.

Totals:	\$ 130,000,000
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### Estimated Requirements for assistance under the Stafford Act:

	AMOUNT	
Coordination		
Technical and advisory assistance	Aug 35, 50	
Debris removal	\$30,000,000 (est.*)	
Emergency protective measures	\$25,000,000 (est*)	
Individuals and Households Program (IHP)	\$75,000,000 (est*)	
Distribution of emergency supplies	**************************************	
Other (specify)		
Totals:	\$130,000,000	
Grand Total:	\$130,000,000	

(\*) Based on Hurricane Isidore, Lili and Ivan (FEMA 1435, 1437, 1548)

Note: Estimates are to reflect total eligible costs before any cost sharing.